

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE**

**WRIT PETITION NO. 6614 OF 2007**

Bipinbhai Bhogilal Kothari  
CA of Dhirajlal Mansukhlal Kothari  
Navsari west, Gujarat ..... Petitioner

versus

Union of India and anr..... Respondent.

Mr. Deepak Trivedi i/b V.S.Hadade for the petitioner  
Mr. Chetan Agrawal for Respondent no.1.  
Ms. V.S.Mhaispurkar AGP for respondent no.2.

**CORAM; A.P. DESHPANDE, J.**  
**DATED; 07TH SEPTEMBER, 2007**

**P.C.;**

1. Being prima facie satisfied that the petitioner has encroached on the land owned by the Union of India and has erected a structure thereupon, a notice under sub section (2) of section 5A of the public Premises (Eviction of unauthorised occupants) Act 1971 came to be issued. The petitioner replied the show cause notice and tried to justify his possession. After affording an opportunity of hearing to the present petitioner the Estate Officer passed an order under section 5A that the said structure should be removed. Aggrieved by the said order, an appeal was carried before the City Civil Court purportedly under section 9 of the Act. The Appellate authority held that the

order passed by the Estate Officer being under section 5A of the Act, no appeal is maintainable. Aggrieved by the said order, the present writ petition has been filed.

2. The learned counsel appearing for the petitioner in the first place contends that the action was sought to be taken under section 5 of the act in as much as the order passed by the Estate Officer not only directs removal of the structure but also further orders eviction of the present petitioner from the premises. It is crystal clear that once the illegal structure stands demolished, eviction would be the consequence thereof. The case of the respondent all through out is that the petitioner has encroached on the land of the railway and has erected an illegal and unauthorised structure. The defence that is available to a person proceeded against under section 5A is to show the authority which permits him to enter upon the land and erect a structure. In the absence of any such authority, an order under section 5A would be legal and justified.

3. Perused the impugned order. The same does not call for any interference at the hands of this court, more so in the exercise of writ jurisdiction. In the result writ petition is summarily dismissed.

